

Decision 169/2006 – Mr David Emslie and the Scottish Public Services Ombudsman
<i>Information and correspondence on rent and service Investigations</i>

Applicant: Mr David Emslie
Authority: Scottish Public Services Ombudsman
Case No: 200600657
Decision Date: 07 September 2006

Kevin Dunion
Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS

Decision 169/2006 – Mr David Emslie and the Scottish Public Services Ombudsman

Request for information on Grampian Housing Association and rent and services investigations - information not held

Relevant Statutory Provisions and other Sources

Freedom of Information (Scotland) Act 2002 section 1(1) (General entitlement).

Scottish Public Services Ombudsman Act 2002 section 8 (Excluded matters); schedule 4 (Matters which the Ombudsman must not investigate).

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Facts

Mr Emslie made an information request to the Scottish Public Services Ombudsman (SPSO) under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) for a range of information including all correspondence which the SPSO had with Grampian Housing Association and all information on the investigation of service and rent charges.

Following an investigation, the Commissioner found that the information was not held by the SPSO and that the SPSO had therefore dealt with Mr Emslie's request for information in line with Part 1 of FOISA.

Background

1. On 14 August 2005, Mr Emslie made an information request to the SPSO under section 1 of the Freedom of Information (Scotland) Act 2002 (FOISA). In his letter, Mr Emslie requested a wide range of information including all correspondence which the SPSO had had with the Scottish Executive and Grampian Housing Association and press releases, reports and legislation relating to the remit of SPSO. Mr Emslie made a request for review in respect of this request on 17 September 2005.
2. The SPSO replied to this request on 27 January 2006 – following my decision (Decision 079/2006) issued 19 December 2005 – in which it provided Mr Emslie with some of his requested information. In respect of other information, the SPSO indicated that the information was not held.
3. Mr Emslie wrote to the SPSO on 3 February 2006 questioning the statement that no investigations had been done into rent and service charges and again asking that the SPSO supply him with all copies of correspondence between Grampian Housing Association and the Housing Ombudsman since 1994.
4. The SPSO replied on 20 February 2006. This response reiterated that there were no investigations since the present SPSO had taken up office and explained that a table showing investigations was from “an old Housing Association Annual Report issued September 2002 before Professor Brown took up her appointment.”
5. By fax of 30 January 2006, Mr Emslie contacted my Office to express his dissatisfaction with the response from the SPSO. On 10 March 2006, Mr Emslie applied to me for a decision as to whether the SPSO had dealt with his information request in accordance with Part 1 of FOISA. He stated that he believed that the information requested by him was either held by the SPSO, or had been destroyed subsequent to his request (of 14 August 2005).
6. Mr Emslie’s appeal was validated by establishing that he had made a valid information request to a Scottish public authority and had appealed to me only after asking the public authority to review its response to his request. The case was allocated to an investigating officer.

The Investigation

7. The officer formally contacted the SPSO on 29 March 2006 (and again on 24 May 2006) in terms of section 49(3)(a) of FOISA asking for its comments on the application and requiring it to provide any withheld information. The SPSO responded on 22 May 2006 and again on 1 September 2006.
8. Mr Emslie's requests were for:
 - Details of all cases and outcomes into calculations of rents and service charges since the SPSO took office [22 October 2002] (Request 1)
 - Correspondence between the previous Housing Association Ombudsman and Grampian Housing Association Ltd (Request 2)
9. Previously, the Housing Association Ombudsman examined and determined all cases, but formally investigated few cases: only 4 or 5 per year resulted in a report. Under the Ombudsman's Terms of Reference, the outcome of formal investigations had to be publicised at the AGM of the Housing Association. The SPSO now examines all cases, and investigates all cases (at Step 4 of its process). Cases investigated at this step would result in a report which is laid before Parliament unless discontinued for any reason.

Submissions from the SPSO

10. In respect of request 1 by Mr Emslie, the SPSO explained that it had searched its databases for any cases in which it had examined, looked at, or investigated any case with the subjects mentioned by Mr Emslie. It explained that it had found no cases which had resulted in a report laid before Parliament. It considers the word "investigation" to refer to a complaint which leads to a report to Parliament. The SPSO had no investigations that resulted in a report laid before Parliament between 22 October 2002 and August 2005 relating to rent and service charges. The SPSO explained that it had also expanded its search of its databases to 3 February 2006. It commented that the Housing Association Ombudsman had not laid reports before Parliament.
11. In respect of the SPSO's statement that it held no information on the 8 complaints (2001-2002) and the 1 complaint (2000-2001) quoted by Mr Emslie, the SPSO explained that these cases did not relate to any report to Parliament, since these were cases of the Housing Association Ombudsman. The "Table 5, Analysis of Complaints by main subject" was from the Annual Report of the previous Housing Association Ombudsman, not the SPSO. Mr Emslie's faxed letter of 3

February 2006 enclosed a photocopy of a page from one of those Annual Reports asking for information.

12. In respect of the 8 complaints highlighted by Mr Emslie, the SPSO explained that although these complaints were raised in 2001 – 2002 about rent and service calculations, these complaints did not proceed to formal report and the information relating to these complaints was not retained.
13. Additionally, the SPSO provided a copy of paragraph 15 of Schedule 4 (Matters which the SPSO must not investigate) of the Scottish Public Services Ombudsman Act 2002. The SPSO explained that it can look at the administrative processes in connection with rent and service charges, but not the decision itself.
14. In respect of the second request, the SPSO explained that the correspondence between the previous Housing Association Ombudsman and Grampian Housing Association Ltd had been destroyed (prior to moving to new premises in November 2003).
15. The SPSO explained that its policy was not to retain “non-active” data records older than 15 months. On 25 January 2006, work began to destroy any files from the previous Housing Association Ombudsman, but any live cases (transferred to the SPSO and open at 22 October 2002) were given new case numbers and treated under the SPSO rules.
16. The SPSO explained that Mr Emslie’s file was the only Housing Association case file held in its premises. The remaining Housing Association Ombudsman case files all fell within the 15 month policy and were destroyed (with certification) in January 2006. Any factual statement or piece of information which the SPSO provides can therefore come from Mr Emslie’s own case file, which the SPSO retains.

Submissions for the Applicant

17. Mr Emslie questioned the statement of the SPSO in its response: he questioned that “no investigations have been carried out into rent and service charges” and submitted a document which he said indicated that there were calculations of rent or service charges in the periods 2000 – 2001, and 2001 – 2002.

18. Mr Emslie also questioned the SPSO's statement that all correspondence between the previous Housing Association Ombudsman and Grampian Housing Association Ltd has been destroyed (prior to moving to new premises in November 2003). He said that the previous Housing Association Ombudsman had contacted Grampian Housing Association seeking permission to supply to Mr Emslie the copy of a legal opinion received by the Housing Association from Grampian Housing Association in 1999. He also stated that he had received copies of his own correspondence from the SPSO which indicated that it still held correspondence, and this contradicted its claim that such information had been destroyed.

The Commissioner's Analysis and Findings

19. I have to decide whether the SPSO holds any information which falls within Mr Emslie's requests.
20. Mr Emslie's initial request was made on the 14 August 2005. He requested extensive information (including requests 1 and 2). This request included the paragraph:

“All information and details of all cases and outcomes of the investigations into the calculations of rents and service charges done since [Professor Brown] came into office (Full and detailed reports and all the relevant information and conclusions).” (Request 1)
21. Mr Emslie's letter of 14 August 2005 also requested:

“I require all correspondence between the Scottish Public Services Ombudsman.... [organisations specified] ... all correspondence with Grampian Housing Association since [Professor Brown] took office.”
22. Mr Emslie expressed dissatisfaction with the responses received in respect of these two pieces of information.
23. This Decision Notice does not give consideration to the issues or material (a legal opinion) in respect of another application which Mr Emslie has with my Office in respect of the SPSO (case reference: 200600247).
24. I have considered the submissions and information provided to me by both Mr Emslie and the SPSO. I am satisfied that the SPSO does not hold any information in respect of request 1.
25. In respect of request 2, having viewed the SPSO's unpublished Archiving Policy and its File Destruction Schedule and having considered the submissions and information provided to me by both Mr Emslie and the SPSO, I accept that the SPSO does not hold any information covered by Mr Emslie's request 2.

26. I accept that the SPSO does not hold any information relevant to Mr Emslie's request. I also accept that the SPSO has not destroyed any information which fell within the applicant's requests subsequent to having received those requests.

Decision

I find that the Scottish Public Services Ombudsman (the SPSO) complied with section 1(1) of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to Mr Emslie's request for information, by stating that it held no information falling within the scope of the request.

Appeal

Should either the Scottish Public Services Ombudsman or Mr Emslie wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days of receipt of this notice.

Kevin Dunion
Scottish Information Commissioner
07 September 2006

APPENDIX

Relevant Statutory Provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

Scottish Public Services Ombudsman Act 2002

8 Excluded matters

- (1) The Ombudsman must not investigate any matter specified in schedule 4.

Schedule 4, paragraph 15

Action relating to the determination of the amount of any rent or service charge.